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June 4, 2013

Chairwoman Mignon Clyburn Federal Communications Commission 445 12th Street, S.W. Washington, D.C. 20554

RE: SoftBank-Sprint Acquisition, IB Docket No. 12-343

## Dear Chairwoman Clyburn:

The Minority Media and Telecommunications Council ("MMTC") respectfully files this letter to reply to SoftBank Corp.'s ("SoftBank") response to MMTC's May 28 letter in this proceeding.<sup>1</sup> In its letter, MMTC encouraged the Commission to seek supplemental information from SoftBank going to its commitment to diversity and service to historically unserved and underserved communities.<sup>2</sup>

Diversity is an essential component of the Commission's public interest analysis. SoftBank's acquisition of Sprint would be the second largest wireless acquisition in U.S. history, and nearly 40% of wireless subscribers are people of color. Yet the Public Interest Statement submitted by SoftBank is effectively silent on diversity, thus placing the Commission in the unfortunate and unprecedented position of being asked to vote on a landmark transaction with nothing to go on at all with respect to plans for diversity and inclusion. This makes the pending transaction truly singular among significant transactions that the Commission has evaluated recently.<sup>3</sup>

<sup>&</sup>lt;sup>1</sup> Letter from Michael H. Pryor, Counsel for SoftBank Corp., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 12-343 (May 29, 2013).

<sup>&</sup>lt;sup>2</sup> Letter from David Honig, President, Minority Media and Telecommunications Council, to Marlene H. Dortch, Secretary, FCC, at 1, IB Docket No. 12-343, at 1 (May 28, 2013) ("MMTC May 28 Letter").

<sup>&</sup>lt;sup>3</sup> <u>See</u> Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Public Interest Statement* 6 (Dec. 21, 2011) (discussing the effect of spectrum availability on broadband adoption for minority and low-income groups); Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, *Public Interest Statement* 57 (Apr. 21, 2011) (citing the NAACP and Hispanic Institute's support for the merger due to AT&T's

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MMTC has not taken a position in this proceeding on whether SoftBank or DISH makes a more favorable suitor for Sprint. Rather, our objective is to generate a comprehensive public record to aid the Commission in its evaluation of the transaction. Thus MMTC's May 28 letter concluded that "SoftBank should have an opportunity to flesh out its record on diversity issues and its commitment to advancing these concerns going forward" by addressing "how the transaction would, among other things, increase broadband access to underserved and unserved areas and expand opportunities for women and minorities in the field of communications."

Rather than criticize MMTC's letter, SoftBank should take advantage of the opening provided by our letter to quickly fill in these key gaps in the public record. SoftBank's silence on the merits, when it has had an opportunity to be heard, may compel the agency to conclude that the company either cannot or will not address these important public interest issues.<sup>5</sup> This is especially concerning given the close connection between competition and diversity,<sup>6</sup> as well as the competitive prospects of this transaction.<sup>7</sup>

supplier diversity program and "the benefits of LTE for communities of color"); Applications for Consent to the Transfer of Control of Licenses, General Elec. Co., Transferor, to Comcast Corp., Transferee, MB Docket No. 10-56, *Applications and Public Interest Statement* 47-50 (Jan. 28, 2010) (committing to expansion of programming for diverse audiences); Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Consolidated Application for Authority to Transfer Control*, MB Docket No. 07-57, Public Interest Statement 13 (Mar. 20, 2007) (citing benefits of "expanded non-English language programming, children's programming, and additional programming aimed at minority and other underserved populations").

<sup>&</sup>lt;sup>4</sup> MMTC May 28 Letter at 4.

<sup>&</sup>lt;sup>5</sup> Washoe Shoshone Broadcasting, 3 FCC Rcd 3948, 3953 (Rev. Bd. 1988), recon. denied, 3 FCC Rcd 5631 (Rev. Bd. 1988), aff'd, 5 FCC Rcd. 5561 (1990) (quoting McCormick on Evidence § 2272 (1984)) ("[I]f a party has it peculiarly in its power to produce witnesses whose testimony would elucidate the transaction, the fact that it does not do it creates the presumption that the testimony, if produced, would be unfavorable.") Instead of answering MMTC's questions, SoftBank has essentially lodged a demurrer. But there is no such thing as a demurrer in Commission proceedings; applicants have an affirmative obligation to put in front of the Commission an adequate record to enable to Commission to conclude that the transaction would serve the public interest, convenience, and necessity. See 47 U.S.C § 310(b).

<sup>&</sup>lt;sup>6</sup> See, e.g. Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies, 17 FCC Rcd 24018, 24078 (2002) (Statement of Commissioner Kevin Martin) ("By choosing candidates from a larger, more diverse pool, broadcasters and MVPDs will be better able to find the most qualified candidates .... The program we adopt today therefore should promote not just diversity, but also true competition.")

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MMTC stands behind the request in our May 28th Letter. Any party proposing to acquire this country's third largest wireless carrier should be ready and willing to answer these basic questions going to diversity and service to historically unserved and underserved communities. We have put the same questions to DISH, and if there comes a point in time when DISH has an application before the Commission to acquire Sprint, we will work to ensure that the public record on these issues is complete in that proceeding as well.

MMTC hopes that, instead of attempting to divert the Commission's attention with formulaic arguments as to timing, SoftBank realizes that it is asking the Commission to be let into a select group in this country—companies and individuals entrusted with managing this country's telecommunications infrastructure—and chooses to answer basic questions about diversity. The questions are straightforward and seek information at any major company's corporate fingertips. Should Softbank choose to address the questions, it could easily do so in a day or so.

There is never an inconvenient time to address diversity. Years later, when our children look back on this episode, the "when and how" these questions were raised will not matter. Shot clocks won't be mentioned. Instead, what will endure is how these questions were answered, and the impact of the actions taken attendant to them on consumer welfare and competition.

Sincerely,

David Honig President

cc: Commissioner Ajit Pai

Commissioner Jessica Rosenworcel

<sup>&</sup>lt;sup>7</sup> <u>See</u> Letter from David Honig, President, Minority Media and Telecommunications Council, to Mignon Clyburn, Chairwoman, FCC, WT Docket No. 13-135 (May 20, 2013).

MMTC's letter was filed as an *ex parte* submission in this permit-but-disclose proceeding. See 47 C.F.R. § 1.1206. Were the opportunity to present arguments and aid the Commission in its evaluation limited to the comments stage, then the Commission would have no need to receive *ex parte* communications at all. MMTC notes that it presented a similar set of questions to SoftBank long before the company filed the current applications with the Commission. Then, as now, SoftBank declined to respond meaningfully to MMTC's questions on diversity.